

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 75/845,350, INTELLIWEAR
Published in the *Official Gazette* on October 30, 2001

-----X
MARK D. TANNEN,

Opposer,

vs.

JAY MACK,

Applicant.
-----X

Opposition No. 91151109



10-29-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #78

Box TTAB NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

STIPULATED PROTECTIVE ORDER

It is hereby stipulated and agreed, by and between the parties hereto through their respective undersigned counsel, pending further order of the Trademark Trial and Appeal Board ("The Board"), that the following procedures, designed to assure the protection of confidential and/or proprietary information, shall govern any disclosure of such information in this proceeding:

1. Any party that produces information in connection with this case orally during testimony at depositions or trial, in writing or through the production of documents or otherwise which it reasonably believes in good faith to be confidential and/or proprietary information, may designate such information as "CONFIDENTIAL," and the information so designated shall thereafter be subject to the provisions of this Stipulated Protective Order. Such designation shall be made at the time that a response to

NY02:457686.1
NY02:314760.1

EXPRESS MAIL LABEL NO.: ER589231341US

discovery is made by placing or affixing a "CONFIDENTIAL" notice or the equivalent in writing on documents containing such confidential information, except that in the case of depositions or trial testimony, the party's counsel wishing to designate portions of a deposition as "CONFIDENTIAL" may do so by making an appropriate statement at the time of the giving of such testimony, or by notifying opposing counsel in writing upon subsequent review of the transcript. Any "CONFIDENTIAL" designation which is inadvertently omitted during document production may be corrected by written notification to opposing counsel, and such documents shall thereafter be treated as "CONFIDENTIAL" in accordance with the provisions of this Stipulated Protective Order.

2. Any information designated "CONFIDENTIAL," pursuant to Paragraph 1 of this Stipulated Protective Order shall be shown or disclosed only to the individually named parties set forth in the caption above (with the exception of any customer lists which shall only be disclosed to outside counsel of record), outside counsel of record, namely, Paul J. Reilly for Opposer, Mark W. Good and Robert T. Daunt for Applicant; necessary clerical and legal support personnel employed by such counsel; independent consultants and experts retained by counsel of record to assist in connection with this proceeding, subject to the provisions contained in paragraph 3 of this Stipulated Protective Order; and The Board and its personnel, as well as, court reporters and their personnel. Such "CONFIDENTIAL" information shall not be disclosed to any other person whatsoever except as otherwise permitted herein or with the written approval of the producing party, and after execution of a copy of the Declaration attached hereto as Exhibit A. All transcripts or documents containing such "CONFIDENTIAL" information and copies thereof shall be returned to the producing party or destroyed

promptly upon the conclusion of this proceeding, except that each party's respective counsel may retain one complete set of all pleadings, motions and briefs and correspondence for their file.

3. In the event that counsel of record for a receiving party proposes to disclose to any expert or independent consultant retained for purposes of this proceeding information designated by the producing party as "CONFIDENTIAL," pursuant to Paragraph 1 of this Stipulated Protective Order, the counsel for the receiving party may proceed to disclose the producing party's "CONFIDENTIAL" information to the proposed expert or independent consultant, provided that said expert or independent consultant first executes a copy of the declaration attached hereto as Exhibit A.

4. Counsel of record for the receiving party shall provide to counsel of record for the producing party a copy of all declarations (Exhibit A) executed pursuant to Paragraph 3 above, promptly upon the conclusion of this proceeding.

5. All information disclosed in this case shall be used by counsel, designated employees, authorized retained outside experts, if any, and any other approved reviewing party, including, but not limited to, the individually named parties, only for the purposes of this litigation and not for any business purposes whatsoever.

6. A party which designated information as "CONFIDENTIAL" shall have a reasonable basis for believing, in good faith, that the information requested is "CONFIDENTIAL," proprietary or commercial information upon which restrictions to access should be imposed before that party designates the information as "CONFIDENTIAL." In the event that a receiving party shall at any time disagree with the designation by the producing party of any information as "CONFIDENTIAL," then the parties will first try, in good faith, to resolve such dispute on an informal basis before

presenting the dispute to The Board by motion or otherwise. The Board may then determine whether the information should be considered "CONFIDENTIAL" and, if so, may rule on what restrictions to access or disclosure should be imposed, if any. No party shall be obligated to challenge the propriety of the "CONFIDENTIAL" designation at the time of production, and a failure to do so shall not preclude a subsequent attack on the propriety of such designation.

7. All information subject to "CONFIDENTIAL" treatment in accordance with the terms of this Stipulation and Order that is filed with The Board, and any pleadings, motions or other papers filed with The Board disclosing any "CONFIDENTIAL" information, shall be filed under seal and kept under seal until further order of The Board. Where possible, only "CONFIDENTIAL" portions of filings with The Board shall be filed under seal. Specifically, "CONFIDENTIAL" information filed with The Board shall be filed in a sealed envelop(s) or other appropriately sealed container(s) bearing (i) the caption of this proceeding, (ii) an indication of the nature of the contents of such envelope(s) or other container(s), (iii) a statement that it is being filed under the terms of this Stipulated Protective Order, and (iv) the legend CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER.

8. This Stipulated Protective Order is without prejudice to the right of any party to seek relief from or modification of any provision contained in it after notice to the other party.

9. Nothing contained in this Stipulated Protective Order shall be construed to prejudice any party's right to use before The Board any "CONFIDENTIAL" material, provided that reasonable notice of the intended use of "CONFIDENTIAL"

material shall be given to counsel of the producing party. The producing party may apply to the court for further protection of the confidentiality of such material.

10. Nothing contained in this Stipulated Protective Order shall prevent any party from objecting to discovery that it believes to be otherwise improper.

11. This Stipulated Protective Order shall (i) continue in perpetuity and (ii) be binding upon the successors and/or assigns of the parties.

12. The restrictions set forth in any of the preceding paragraphs shall not apply to information or material that:

- (a) was, is, or becomes public knowledge, not in violation of this Stipulated Protective Order;
- (b) is acquired by the non-designating party from a third party having the right to disclose such information or material; or
- (c) was lawfully possessed by the non-designating party prior to the entry by The Board of this Order or the execution of this Order by the undersigned counsel of record.

EXPRESS MAIL LABEL NO.: ER589231341US

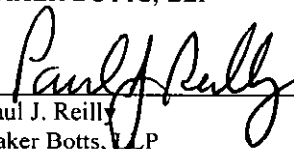
13. The parties through their respective undersigned counsel agree to submit this Stipulated Protective Order for entry by The Board and to be bound by its terms prior and subsequent to entry by The Board.

Respectfully submitted,

BAKER BOTTS, LLP

Date: 9-23-03

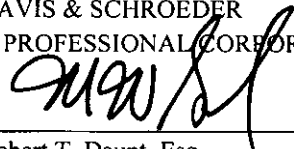
By: _____


Paul J. Reilly
Baker Botts, LLP
30 Rockefeller Plaza, 44th floor
New York, New York 10112-0228
Attorneys for Opposer

DAVIS & SCHROEDER
A PROFESSIONAL CORPORATION

Date: 9/15/2003

By: _____


Robert T. Daunt, Esq.
Mark W. Good, Esq.
215 West Franklin Street, 4th Fl.
P.O. Box 3080
Monterey, California 93942-3080
Attorneys for Applicant

SO ORDERED this _____
day of _____, 2001

Administrative Trademark Judge
Trademark Trial and Appeals Board

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 75/845,350, INTELLIWEAR
Published in the *Official Gazette* on October 30, 2001

-----X
MARK D. TANNEN,

Opposer,

vs.

JAY MACK,

Applicant.
-----X

Opposition No. 91151109

AFFIDAVIT OF COMPLIANCE FOR NON-PARTIES

State of _____)
County of _____)

I, _____ on Oath, depose and state as follows:

1. I live at _____. I am employed as (state
position) _____ by (state and address of employer)
_____.

2. I have read the Stipulated Protective Order entered in this case, a copy of which
has been given to me. I understand the provisions of the Stipulated Protective Order, and agree
to comply with and to be bound by its provisions at all times.

Executed this _____ day of _____, 200__.

By: _____

Subscribed and sworn to before me this
_____ day of _____, 200__.

EXPRESS MAIL LABEL NO.: ER589231341US

CERTIFICATE OF MAILING AND SERVICE

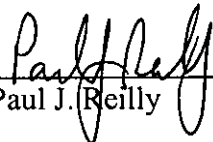
I hereby certify that the foregoing STIPULATED PROTECTIVE ORDER
as deposited with the United States Postal Service as "Express Mail Post Office To
Address Service", postage prepaid, in an envelope addressed to:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513
Box TTAB NO FEE

and a true and correct copy of the foregoing has been mailed to the following as first
class mail, postage prepaid, in an envelope addressed to:

Robert T. Daunt, Esq.
DAVIS & SCHROEDER
215 W. Franklin Street, 4th Floor
Post Office Box 3080
Monterey, California 93942

on October 29, 2003.

By: 
Paul J. Reilly